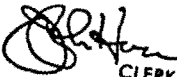


FILED

UNITED STATES DISTRICT COURT **SEP 13 2013**

DISTRICT OF SOUTH DAKOTA


CLERK

Purina Animal Nutrition LLC,
formerly known as Land O' Lakes
Purina Feed LLC,

Case No. 13-4099

Plaintiff,

v.

**COMPLAINT
(JURY TRIAL DEMANDED)**

K.C. Dairies, LLP,

Defendant.

For its Complaint against Defendant, Plaintiff states and alleges as follows:

**PARTIES, JURISDICTION AND
VENUE**

1. Plaintiff Purina Animal Nutrition LLC, formerly known as Land O' Lakes Purina Feed LLC ("Purina"), is a Delaware limited liability company. Purina's sole member is Land O' Lakes, Inc. Land O' Lakes is a Minnesota cooperative corporation with its principal place of business located in Arden Hills, Minnesota. Under 28 U.S.C. § 1332(c)(1), Land O' Lakes, Inc. is a citizen of the State of Minnesota. Because its sole member is a citizen of the State of Minnesota, Purina is also a citizen of the State of Minnesota.

2. Defendant K.C. Dairies, LLP ("K.C. Dairies") is a South Dakota limited liability partnership. K.C. Dairies'

partners are Brian Kelly, Nicholas Tierney, Nigel Kelly, Peter Robinson and George Anthony Russell. Messrs. Kelly, Tierney, Kelly, Robinson and Russell are citizens of Ireland. Because all of its members are citizens of Ireland, K.C. Dairies is also a citizen of Ireland.

3. The Court has subject-matter jurisdiction over this case under 28 U.S.C. § 1332(a) based upon the complete diversity of the citizenship between the parties and the fact that the amount in controversy, exclusive of costs and interest, exceeds the sum of \$75,000.00.

4. Venue is proper in this district under 28 U.S.C. § 1391(b).

FACTS COMMON TO ALL COUNTS

5. Purina is engaged in the business of producing and distributing animal feed and nutrition products, including feed for dairy facilities. Purina also provides nutritional consulting services for dairy facilities.

6. K.C. Dairies operates a dairy facility in or near Elkton, South Dakota.

7. In or around December 2007, K.C. Dairies submitted a Credit Application and Agreement ("Credit Agreement") to Purina to purchase feed products and nutritional consulting services from Purina on credit. A true and correct copy of the Credit Agreement, which was signed by K.C. Dairies' authorized

representative and registered agent, Edward Kavanagh, is attached to this Complaint as Exhibit A.

8. Under the terms of the Credit Agreement, K.C. Dairies agreed to timely pay all amounts due to Purina. K.C. Dairies further agreed to pay finance charges on any past-due amounts at the rate of 18% per year and any attorney fees, costs and disbursements incurred by Purina to collect any amounts due from K.C. Dairies.

9. Purina supplied animal feed and nutritional consulting services to K.C. Dairies pursuant to the terms of the Credit Agreement.

10. K.C. Dairies failed to pay for feed products and nutritional consulting services that it ordered and received from Purina from February through May 2013 (hereinafter "the Feed Products").

11. The unpaid principal balance due to Purina for the Feed Products is \$91,484.84. A true and correct summary of K.C. Dairies' unpaid invoices is attached to this Complaint as Exhibit B. True and correct copies of the unpaid invoices are collectively attached to this Complaint as Exhibit C.

12. As of September 1, 2013, the unpaid invoices had accrued finance charges in the amount of \$5,912.05. Finance charges have accrued on the unpaid invoices since September 1, 2013, and will continue to accrue in the future, at the rate of

\$45.11 per day. A true and correct summary of the finance charges due on the unpaid invoices is attached to this Complaint as Exhibit D.

13. Purina has incurred, and will continue to incur, attorney fees, costs and disbursements in prosecuting this case.

14. Purina has satisfied all conditions to the prosecution of this action.

**COUNT I
ACTION FOR THE PRICE**

Purina restates all of the foregoing paragraphs of this Complaint and further states and alleges as follows:

15. The Feed Products constitute "goods" under S.D.C.L. § 57A-2-105.

16. K.C. Dairies received and accepted the Feed Products from Purina.

17. K.C. Dairies fed the animal feed included in the Feed Products to its dairy cattle.

18. Under S.D.C.L. §§ 57A-2-607(1) and 57A-2-709(1)(a), Purina is entitled to recover the purchase price for the Feed Products from K.C. Dairies in the principal amount of \$91,484.84.

19. Purina is also entitled to recover finance charges in the amount of \$5,912.05, and additional finance charges at the rate of \$45.11 per day from September 1, 2013, through the date

of entry of judgment, together with all of its attorney fees, costs and disbursements.

**COUNT II
BREACH OF CONTRACT**

Purina restates all of the foregoing paragraphs of this Complaint and further states and alleges as follows:

20. K.C. Dairies contracted and agreed to pay Purina the purchase price for the Feed Products.

21. K.C. Dairies breached its contractual obligations to Purina by failing to pay the purchase price for the Feed Products.

22. Purina is entitled to recover the purchase price for the Feed Products in the principal amount of \$91,484.84.

23. Purina is also entitled to recover finance charges in the amount of \$5,912.05, and additional finance charges at the rate of \$45.11 per day from September 1, 2013, through the date of entry of judgment, together with all of its attorney fees, costs and disbursements.

**COUNT III
UNJUST ENRICHMENT**

Purina restates all of the foregoing paragraphs of this Complaint and further states and alleges as follows:

24. K.C. Dairies has been enriched in an amount equal to the reasonable value of Feed Products.

25. It would be unjust, inequitable and morally wrong for K.C. Dairies to retain the benefit and value of the Feed Products without paying Purina for the Feed Products.

26. Purina is entitled in equity to recover the reasonable value of the Feed Products from K.C. Dairies.

27. Purina is also entitled to recover finance charges in the amount of \$5,912.05, and additional finance charges at the rate of \$45.11 per day from September 1, 2013, through the date of entry of judgment, together with all of its attorney fees, costs and disbursements.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and the Seventh Amendment to the United States Constitution, Purina hereby demands a trial by jury.

WHEREFORE, Purina respectfully prays for this Court's judgment as follows:

1. Awarding Purina money damages against K.C. Dairies in the principal amount of \$91,484.84;


2. Awarding Purina finance charges in the amount of \$5,912.05, and additional finance charges at the rate of \$45.11 per day from September 1, 2013, through the date of entry of judgment;

3. Awarding Purina all of its attorney fees, costs and disbursements; and

4. Granting Purina all such other and further relief as the Court deems just and equitable under the circumstances.

CADWELL, SANFORD, DEIBERT &
GARRY, LLP

Dated: September 12th, 2013

By: 
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